

FILED

CAUSE NO. A-1844

2. Respondent is a licensed resident insurance producer whose current registered business address with the Department is HighMark Financial, LLC, 10685 Bedford Avenue,

Suite 100, Omaha, NE 68134, and whose registered home address is 4202 N. 157th Avenue, Omaha, NE 68116-2846. Respondent serves as the designated producer of HighMark Financial, LLC, which currently holds an insurance agency license in the State of Nebraska. (See Ex. 2)

3. Respondent currently holds appointments with several insurers authorized to do business in the State of Nebraska including American Equity Investment Life Insurance Company, Ameritas Life Insurance Corp., Blue Cross and Blue Shield of Nebraska, C. M. Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), Massachusetts Mutual Life Insurance Company, UnitedHealthCare Insurance Company. (See Ex. 2)

4. On or about September 8, 2009, a Petition and Notice of Hearing in this matter was served upon Respondent by mailing the same to his registered business address at that time, Envision Financial Group, 1065 N. 115th Street, Suite 150, Omaha, NE 68154-4423, via certified mail, return receipt requested. On or about October 13, 2009, the certified letter containing the Petition and Notice of Hearing sent to Respondent at his registered business address was returned to the Department by the United States Postal Service marked as "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (See Ex. 1)

5. On or about September 8, 2009, a Petition and Notice of Hearing in this matter was served upon Respondent by mailing the same to his registered home address via regular U.S. mail. The letter addressed to Respondent at his registered home address containing the Petition and Notice of Hearing in this matter was not returned to the Department nor did the Department received notice indicating the letter was undeliverable. (See Ex. 1)

6. On or about October 2, 2009, a copy of a Motion to Continue Proceedings and the Order Continuing Hearing in this matter from October 15, 2009, to November 10, 2009, at 10:00 a.m., or as soon thereafter as the matter may be heard, was served upon Respondent as his

current registered business address of Highmark Financial, LLC, 10685 Bedford Avenue, Suite 100, Omaha, NE 68134, via certified mail return receipt requested. On or about October 8, 2009, the certified letter containing the Motion to Continue Proceedings and the Order Continuing Hearing sent to Respondent at his registered business address was returned to the Department by the United States Postal Service marked as "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (See Ex. 1)

7. On or about October 2, 2009, a copy of a Motion to Continue Proceedings and the Order Continuing Hearing in this matter from October 15, 2009, to November 10, 2009, at 10:00 a.m., or as soon thereafter as the matter may be heard, was served upon Respondent by mailing the same to his registered home address via regular U.S. mail. The letter addressed to Respondent at his registered home address containing the Motion to Continue Proceedings and Order Continuing Hearing in this matter was not returned to the Department nor did the Department received notice indicating the letter was undeliverable. (See Ex. 1)

8. On or about October 30, 2007, Respondent was the subject of a Findings of Fact, Conclusions of Law, Order Postponing Registration, and Order to Show Cause ("Orders") issued by the State of Nebraska Department of Banking & Finance ("DOB") for a matter entitled In the Matter of Ryan M. Jindra, 1065 North 115th Street, Suite 150, Omaha, Nebraska, in which Respondent was ordered to appear before the DOB to show cause why his application for registration as an investment adviser representative of Envision Investment Advisors, LLC, should not be denied in Nebraska, why Respondent should not be barred from conducting securities business in Nebraska, and/or why a fine, not to exceed \$25,000.00 per violation, should not be imposed upon him for violations of the Securities Act of Nebraska. (See Ex. 3)

9. On or about June 30, 2008, the DOB issued a Findings of Fact, Conclusions of Law, and Consent Order ("Consent Order") relating to the above-referenced Orders whereby Respondent entered into a consent agreement with DOB and agreed, among other items, to pay an administrative fine to the DOB in the amount of \$5,000.00. The Consent Order dated June 30, 2008, vacated the Order Postponing Registration and Order to Show Cause issued by the DOB on October 30, 2007, and cancelled the hearing on said Orders thereby finalizing the administrative action taken against Respondent by the DOB. (See Ex. 3)

10. On or about July 1, 2009, the DOB issued a Findings of Fact, Conclusions of Law, and Order to Cease and Desist ("Cease and Desist") against Respondent for violating several provisions of the Nebraska Securities Act as well as for violations of the Consent Order finalized by Respondent and the DOB on June 30, 2008. Pursuant to the terms of the Cease and Desist order, said order became a final order of the DOB on July 24, 2009. (See Ex. 3)

11. Respondent failed to report to the Director of the Department of Insurance the administrative actions taken by the DOB dated October 30, 2007, June 30, 2008, and July 1, 2009. (See Ex. 3)

12. On or about July 8, 2009, the Department initiated a Market Conduct investigation with regard to Respondent and his insurance operation HighMark Financial, LLC ("HighMark") as a result of a referral from the DOB. (See Ex. 3)

13. Respondent, designated producer of HighMark, served as the only signor on HighMark's bank accounts and was the only individual who could make withdrawals or deposits, as well as electronically transfer funds, into or out of said bank accounts. (See Ex. 3)

14. In January, April and May of 2009, a bank account of HighMark, placed with Bank of the West, was overdrawn with overdraft and returned check charges assessed against

HighMark during those timeframes. A second bank account belonging to HighMark, placed with Bank of America, had service charges subtracted out on a monthly basis, but no other transactions. That account was overdrawn for a period of four months during February 2009 through May 2009. (See Ex. 3)

15. In the affidavit of Carol McDermitt ("McDermitt"), market conduct examiner for the Department, Respondent admitted to McDermitt during the course of the Department's investigation that he had never balanced a bank statement for HighMark. (See Ex. 3)

16. In the affidavit of McDermitt, she indicates that Respondent informed her that he had one bank account for HighMark, that Respondent had six bank accounts opened concurrently since 2007 for HighMark, and that Respondent could not provide an explanation for the existence of three of the accounts. (See Ex. 3)

17. Upon request by McDermitt, Respondent could not provide year-end statements for HighMark for the years 2007 and 2008 as Respondent indicated to McDermitt that the requested reports were not available. (See Ex. 3)

DISCUSSION

In this matter, the Department provided evidence of the submission of the Petition and Notice of Hearing to Respondent at his previous registered business addresses by certified letter, return receipt requested, on or about September 8, 2009, as well as submission of the Petition and Notice of Hearing to Respondent at his registered home address by regular U.S. mail on the same date. The Department also provided evidence of the submission of the Motion to Continue Proceedings and the Order Continuing Hearing to Respondent at his current business address by certified letter, return receipt requested, on or about October 2, 2009, as well as submission of

said documents to Respondent at his registered home address by regular U.S. mail on the same date.

Notwithstanding Respondent's failure to claim the certified letters containing the Petition and Notice of Hearing, Motion to Continue Proceedings, and the Order Continuing Hearing or his failure to appear at the administrative hearing in this matter, Respondent was given proper notice of these proceedings. The Department's attempts to give notice to Respondent of the administrative hearing in this matter more than satisfy the notice of hearing requirements set forth by the Nebraska Administrative Procedure Act, specifically NEB. REV. STAT. § 84-913, as well as 210 NEB. ADMIN. R. & REG. 26-002.

As a licensed insurance producer in the State of Nebraska, Respondent, pursuant to NEB. REV. STAT. § 44-4065(1) (Reissue 2004), is required to report to the Department any administrative action taken against him by another governmental agency in this State within thirty days of the final disposition of the matter. As a part of said report, Respondent must include a copy of the order, consent order, or other relevant legal documents related to the administrative action. In reviewing the facts before me, Respondent failed to notify the Department within the required time frame of the administrative action initiated by the DOB on October 30, 2007, which was subsequently finalized by the Consent Order dated June 30, 2008. Respondent also failed to notify the Department within the required time frame of the Cease and Desist order issued by the DOB on July 1, 2009, and in which final disposition occurred on July 24, 2009.

Respondent is also under the obligation as a licensed insurance producer to conduct the business of insurance in this State in a manner that is not fraudulent, coercive, or dishonest, or that demonstrates incompetence, untrustworthiness, or financial irresponsibility. As the sole

signor on HighMark's bank accounts and the only individual who could make withdrawals or deposits, as well as electronically transfer funds, into or out of said bank accounts, Respondent was imparted with the responsibility to properly maintain HighMark's multiple bank accounts to ensure at a minimum they did not become overdrawn. In looking at the facts before me, it is clear Respondent failed in this duty. Over a span of several months, Respondent repeatedly allowed at least two of HighMark's bank accounts to become overdrawn and incur overdraft and returned check charges. Even more troubling is Respondent's own admission to the Department that he had never balanced a bank statement for HighMark and that only one bank account existed for HighMark when the facts indicate Respondent had six bank accounts open concurrently since 2007 for HighMark. These issues, coupled with Respondent's refusal or failure to provide the most basic of year-end statements for HighMark for the years 2007 and 2008, demonstrates incompetence and financial irresponsibility by the Respondent in the course of transacting the business of insurance in the State of Nebraska.

Given the circumstances surrounding Respondent's failure to report administrative actions taken against Respondent by the DOB, as well as Respondent's failure to transact the business of insurance, as it relates to HighMark, in a competent and financially responsible manner, the facts of this matter sufficiently demonstrate and support the Department position and reasoning for recommending the revocation of Respondent's insurance producer license.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of insurance producers to sell insurance in the State of Nebraska pursuant to NEB. REV. STAT. §§ 44-101.01 and 44-4047 ET SEQ.

2. The Department has personal jurisdiction over Respondent.

3. NEB. REV. STAT. § 44-4059(1)(b) provides that the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for a producer violating any insurance law or any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director.

4. NEB. REV. STAT. § 44-4059(1)(h) provides that the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for a producer using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.

5. NEB. REV. STAT. § 44-4065(1) (Reissue 2004) provides that an insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter.

6. Respondent's failure to provide proper and adequate notice to the Department of the administrative actions taken against him by the State of Nebraska Department of Banking & Finance on October 30, 2007, June 30, 2008, and July 1, 2009, is a violation of an insurance law and regulation, specifically NEB. REV. STAT. § 44-4065(1) (Reissue 2004).

7. Respondent's failure to properly and consistently maintain bank accounts and financial records for HighMark Financial, LLC, a licensed insurance agency, is a violation of an insurance law and regulation, specifically NEB. REV. STAT. § 44-4059(1)(h).


8. Respondent, by his actions, violated NEB. REV. STAT. §§ 44-4059(1)(b), 44-4059(1)(h), and 44-4065(1) (Reissue 2004).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's insurance producer license in the State of Nebraska be revoked. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until all provisions of this order have been complied with.

Dated this 13th day of November, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


JOEL F. GREEN
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department in the matter of State of Nebraska Department of Insurance vs. Ryan M. Jindra, Cause No. A-1844.

Dated this 16th day of November, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent's business address at HighMark Financial, LLC, 10685 Bedford Avenue, Suite 100, Omaha, NE 68134, by certified mail, return receipt requested on this 16th day of November, 2009.

I also hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent's home address at 4202 N. 157th Street, Omaha, NE 68116, by regular U.S. mail on this 16th day of November, 2009.

